IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 6TH JULY 2007 / 15TH ASHADHA 1929

WP(C).No. 20773 of 2006(W)

AGAINST THE ORDER IN EP.328/2000 IN OS.40/1998 of ADDL.MUNSIFF COURT, ALAPPUZHA

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PETITIONER:

G.GOPAKUMAR, ADVOCATE,
ROOM NO.101, MUNICIPAL REST HOUSE,
OPPOSITE DISTRICT COURT, ALAPPUZHA,
RESIDING AT MEMANAD HOUSE, SANATHANAPURAM P.O.,
ALAPPUZHA.

BY ADV. SRI.S.SANAL KUMAR
SMT.BHAVANA VELAYUDHAN

RESPONDENT:

NEDUNGADI BANK, ALAPPUZHA,
NOW MERGED WITH PUNJAB NATIONAL BANK,
ALAPPUZHA.

BY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.20773/2006 W

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE EXECUTION PETITION E.P.NO.328 OF 2000 DTD. 22/12/2000.**

EXT.P2: **COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN WP(C) NO.16366 OF 2005 DTD. 31/05/2005.**

EXT.P3: **COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN WP(C) NO.33912 OF 2005 DTD. 22/03/2006.**

EXT.P4: **COPY OF THE COMMUNICATION OF THE VILLAGE OFFICER, PAZHAVEEDU.**

EXT.P5: **COPY OF THE COMMUNICATION OF THE ADDITIONAL CHIEF SECRETARY DTD. 15/05/2006.**

/TRUE COPY/

KSS

PIUS C. KURIAKOSE,J.

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W.P.(C) No.20773 of 2006

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Dated: 6th July, 2007

JUDGMENT

This Writ Petition is remaining defective on the reason that service is not completed on the respondent-Bank. In the nature of the order which is being passed hereunder, I am of the view that it is not necessary that the Bank is also served with notice.

2. The grievance of the petitioner is that the respondent-Bank has filed an execution petition for recovery of the decree debt and simultaneously initiated proceedings under the Revenue Recovery Act. With the same complaint the petitioner approached this court on a previous occasion and this court passed Ext.P3 judgment. Ext.P3 was passed directing the petitioner to convince the execution court that the petitioner has discharged the entire decree debt in full by making payments in revenue recovery proceedings. Ext.P3 also recorded the submission of the Bank that they have withdrawn from revenue recovery proceedings. This court considering the averments in the Writ Petition that in spite of Ext.P3 the Bank is proceeding simultaneously before the execution court as well as under the provisions of the Revenue Recovery Act, granted interim stay on condition that the petitioner who is an Advocate by profession pays to

the decree-holder a sum of Rs.5000/- within two months from 4.8.2006. Mr. S.Sanakumar, learned counsel for the petitioner unable to inform me whether the petitioner has complied with the above condition.

3. Having regard to the submissions of Mr.S.Sanalkumar, learned counsel for the petitioner, I am of the view that the Writ Petition ca be disposed of at this stage itself in the following terms:

The execution court will verify whether the petitioner has paid a sum of Rs.5000/- towards the decree debt as ordered by this court on or before 4.10.2006. If on verification it is seen that such payment has been made by the petitioner, the court below will hold up further coercive action against the petitioner subject to the following conditions:

The petitioner will pay every month commencing from 1.8.2007 at the rate of Rs.3500/- towards the decree debt. This will be subject to the further condition that if the petitioner defaults any single instalment, he will forfeit the benefit of this judgment. Once the petitioner becomes confident that the entire decree debt is actually wiped of, it is open to him to file an application before the court below in that regard and upon receiving such application the execution court

will hear the decree-holder Bank and take a decision on that application. It is however clarified that if it is seen that the petitioner has not paid a sum of Rs.5000/- as per the interim order dated 4.8.2006 within the time stipulated, the Writ Petition will stand dismissed.

The Writ Petition is disposed of as above. No costs.

srd **PIUS C.KURIAKOSE, JUDGE**